

In the Court of Appeals of the State of Mississippi

NO. 2007-CP-00718-ROA

Lewis Jenkins

FILED

Appellant

-vs-

State of Mississippi

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SUPREME COURT
COURT OF APPEALS

Appellee

Brief of Appellant

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ORAL Argument Not Requested

PRO Se Prisoner Brief

In the Court of Appeals of the State of Mississippi

NO. 2007-CP-00768-COA

Lewis Jenkins

Appellant

-vs-

State of Mississippi

Appellee

Certificate of Interested Persons

The Appellant certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

Lewis Jenkins _____ Appellant

Honorable Anthony Buckler _____ District Attorney

Honorable Billie J. Landrum _____ Circuit Court Judge

Lewis Jenkins
Lewis Jenkins (Pro Se Appellant)

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Statement of Issues

Issue One:

Whether the trial Court erred in dismissing the Post-Conviction without an Evidentiary Hearing.

Issue Two:

Whether the trial Court erred in denying the Motion to Suppress regarding the statements by Jenkins.

Issue Three:

Whether the trial Court erred in Denying the Motion to Dismiss on the Speedy trial Claim.

Issue Four:

Whether Jenkins' Guilty Plea was Voluntary, Knowingly and Intelligently entered on the Charge of Manslaughter.

Issue Five:

Whether the Evidence of Material Facts, not Previously Presented and heard, Requires a Vacation of of the Conviction and sentence in the interest of Justice.

Issue Six:

Whether there was a Constructive Denial of Counsel, which was Prejudicial for Jenkins between March 14, 2002 and March 15, 2004.

Issue Seven:

Whether Jenkins was denied the effective Assistance of Counsel By Retained Counsel from on or about March 22, 2004 to July 29, 2004.

Issue Eight:

Whether the Cumulative Effect of the assigned Errors denied Jenkins his Right to Due Process of Law which would Require Reversal.

Statement of Case

This case involves the murder of Ms. Teresa Gillum in Jones County, Ellisville, Mississippi.

According to Jones County Authorities, the death of Ms. Gillum occurred between Thanksgiving and Christmas, 2001, in a trailer located on Rogers Road, Ellisville, Mississippi.

The badly decomposed body of Ms. Gillum was discovered by two hunters, in a shallow grave around Shilo Cemetery on or about February 8, 2002.

There was no positive identification of the body until late February, early March, 2002, when it was identified as Ms. Teresa Gillum.

Once the identification had been made, further investigation revealed that Ms. Gillum (AKA) Queen Bee was an associate of Jenkins.

Mr. Wayne Black, Jones County Sheriff's Office and Mr. Jimmu Herzog with the Mississippi Highway Patrol went to the Jones County Jail (where Jenkins was housed on an unrelated charge) and interviewed Jenkins. This was the first interview on or about 3-5-02.

On or about March 8, 2002, Jenkins was interviewed a second time. On these two occasions (according to Mr. Black) Jenkins was interviewed as an associate of Ms. Gillum's and not a suspect.

During the late evening and early morning hours of March 12 and 13, 2002, another interview was conducted with Jenkins. At this third interview is when Mr. Black and the state contend Jenkins confessed to the charge. This interview was video taped. Also, the interview on March 14, 2002, was taped (video).

On or about March 14, 2002, Jenkins was taken for Initial Appearance on the Charge of Murder. At the Initial Appearance, Justice Court Judge David Lyons, appointed the Public Defender's Office to represent Jenkins on the Murder Charge. Honorable J. Ronald Parrish was with the Public Defender's Office and was currently representing Jenkins on an unrelated charge.

From the date of the Initial Appearance (March 14, 2002) until March 14, 2004, no type of action was taken on this Murder Charge, by the State or Defense.

Honorable Grant Hedgepeth, District Attorney in the Prior Administration did not seek an indictment on the Charge and no further investigation was conducted during this two year period.

Mr. Parrish became Assistant District Attorney and on March 15, 2004, an indictment was returned against Jenkins for Murder.

Jenkins sister retained Ms. Otisa Strickland to represent Jenkins in this case.

On or about July 29, 2004, Pursuant to the advice of Ms. Strickland, Jenkins entered a Plea of Guilty to the lesser offense of Manslaughter.

Statement of Facts

Jenkins was first interviewed in this case on or about 3/5/02. No starting or ending time. (R. 71).

The second interview was on or about 3/12-13/02. (R. 111). There was a lapse of approximately two (2) hours from time on Rights form and actual interview.

The third interview was on or about 3/14/02. (R. 136) Allegedly at the Request of the District Attorney. Honorable Grant Hedgpeth.

On the 14th day of March, 2002, an Affidavit in state Cases and Justice Warrant was issued on Jenkins for the offense of Murder § 97-3-19 (a) MCA (1972) (R. 69-70)

Jenkins went to Initial Appearance on the same date 3/14/02 on the charge of Murder. (R. 65).

Jenkins was found to be indigent and that he was currently represented by the Public Defender's office. (R. 66)

Justice Court Judge, Honorable David Lyons Appointed the Public Defender to represent Jenkins on this Murder case. On or about March 14, 2002. (R. 67 + 152)

The Police Reports and statements (R. 143-154), reflect that no further investigation was had from March, 2002 to March 15, 2004.

Also, No type of action was taken by Defense Counsel or State in this case from March 14, 2002 to March 15, 2004.

Pursuant to Exhibit "A" (R. 176) submitted by the Circuit Court of Jones County, in support of its order Denying Post-Conviction Relief, Page (53) Lines (10) thru (26), the Court stated there was no Grand Jury at the time because everybody was running for Public office in the D.A.'s office, the D.A. and the Assistant.

This was the reason the Court denied the motion to Dismiss for lack of speedy trial. The delay from March 14, 2002 to March 15, 2004. No Grand Jury in Jones County, Mississippi for two (2) years?

The Lab Report (R.160) reflects that human blood was found on the wall and floor of the trailer on Rogers Road, where the State alleges the crime occurred. Also, three, what appeared to be finger smears on the wall.

was not enough to test; therefore, No DNA or blood typing was done. No finger prints listed.

The follow-up on the Lab Report (R. 160) reflects that Mr. Wayne Black, investigator, advised Mr. Bush from the Crime Lab, that he (Black) had information from credible witnesses that the occupant of the questioned mobile home was observed cleaning a large amount of blood from the living room area sometime just prior to Christmas.

Jenkins was certainly not the occupant of the trailer. No effort was made to find out who the occupant was.

In the Police Investigation Report prepared by Mr. Black (R. 147) Reflects that Ms. Gillum and Priscilla Jones were together on or about the middle of January, 2002, and Ms. Gillum left with a white male in a black pick-up and Ms. Gillum had not been seen or heard from since then.

This statement was given on or about 3/16/02.

The indictment was returned on or about March 15, 2004 for the offense of Murder. (R. 32).

Jenkins's sister retained the Honorable Otis Strickland, on or about 3/22/04 to represent Jenkins in this case.

On or about July 29, 2004, the state filed a motion to Reduce Charge, to the Charge of Manslaughter. (R. 34).

An Order Reducing Charge was entered on or about July 29, 2004. (R. 36).

Petition to Enter Plea of Guilty was filed on or about July 29, 2004. (R. 37)

The Guilty Plea was had on July 29, 2004. (R. 44).

Ms. Strickland had a printed witness list (Exhibit P-7) ^(R/163), but Jenkins has not found any evidence that she interviewed these witnesses.

Mr. David Thompson, stated that the truck allegedly used by Jenkins in this case, was sitting at his shop without a transmission for two months during the time the crime was alleged to have occurred. (Exhibit P-8).
Affidavit of Mr. Thompson.

Summary of Argument

- (1) In denying the Post-Conviction Relief Motion, the Court state that Jenkins was not appointed Counsel, this is clearly rebutted by the Record. Mr. Thompson signed an Affidavit and was listed as a witness. That the truck allegedly used by Jenkins was not operable during the time the crime allegedly occurred.
- (2) Jenkins statement was coerced, Fabricated and involuntary. Mr. Black told Jenkins he would talk to the narcotics people and see if he could do something for Jenkins. The truck was not operable. The Miranda Warnings were not read on the videotape. Jenkins was cursed and mistreated for two hours prior to the interview. He was lead through the statement by Mr. Black, saying what he was told to say.
- (3) The Court in denying Post-Conviction Relief, stated that the delay from March 14, 2002 or indictment on March 15, 2004 and sentencing is inconsequential, because a valid Plea waives the Speedy trial Right.

Jenkins agrees that a Valid Plea does in fact waive a Speedy trial claim, but in the instant case, there was no Plea nor a signed Petition to Enter a Plea of Guilty Prior to the Hearing and entry of Order denying the Motion to Dismiss. The Court denied the Motion on July 27, 2004. Petition to Enter Guilty Plea was not signed until July 28, 2004 and Counsel's Certificate on July 29, 2004. Plea was not entered until July 29, 2004, all supported by the Record. Further, the Court stated in its denial of the Motion that there was no Grand Jury in Jones County, because everybody was running for Public office, DA and assistant DA, as part of the reason for dismissing the Speedy trial claim.

(4) Jenkins contends his Counsel was ineffective in regards to the decision to Enter Plea. That Counsel did not adequately inform Jenkins as to what was in the Discovery, nor the possible defenses and law in regard to such. The Court not advising Jenkins of the elements of the charge of Manslaughter. Had Jenkins been apprised of the Discovery, He certainly would not have entered a Plea, but would have chosen to go to trial.

(5) The references to the truck in the Video taped statement were fabricated. Witness statements and Police Reports corroborate Jenkins First Statement, that he did not have anything to do with the death of Ms. Gillum as they were friends. There were no lamps in the trailer as alleged object used to cause the death of Ms. Gillum. Turkey Keys (a known drug dealer) was leasing the trailer at the time of Ms. Gillum's death. He was never questioned in this case. Jenkins mother woke Jenkins up early in the morning, and told him that

Reus wanted him to come to the trailer and clean up. When Jenkins arrived, he saw blood on the wall and floor (this was not unusual as they were always fighting about the drugs) and Reus told Jenkins he had hit a dude in the head with his 9mm Pistol and busted the clip. Jenkins did observe the broken clip in the pistol. Reus had torn the liner out of the trunk of his car and got rid of the car a couple of days later. The blood in the trailer could not be tested for blood typing nor DNA. A pager was found in the same general area of where the body was found. It came from Altell in New Orleans, as there were no outlets in Mississippi. Reus & Aubo, were from around New Orleans.

(6) Jenkins was appointed Counsel (Public Defender's Office) on March 14, 2002, to represent him on the murder charge. From March 14, 2002 to March 15, 2004, Counsel did absolutely nothing in regards to the case. No motions, no discovery, no investigation, did not see Jenkins. In fact no action whatsoever was taken in reference to the murder charge between these dates. Two years the case set in limbo.

(7) Counsel retained by Jenkins sister obtained discovery, filed and argued (3) motions, all of which were denied. Did not interview witnesses, did not inform Jenkins of possible defenses nor discuss the facts and law in regard to the discovery material and failed to meet the minimum standard of effective assistance of counsel in the plea process.

(8) The cumulative errors herein denied Jenkins his right to due process pursuant to the 5th, 6th and 14th Amendments to the United States Constitution.

Argument

ISSUE ONE

Whether the trial Court ERRED In
Dismissing the Post-Conviction
Without an Evidentiary Hearing.

This Court has held that the denial of Post-Conviction by the trial Court is Reviewed under the clearly erroneous standard. EACHUS v. State, 847 So. 2d 280 (Miss. App. 2003) (citing, PAGE v. State, 770 So. 2d 1052 (Miss. Ct. App. 2000), and Questions of Law is Reviewed de novo. Also, the Court may at its option, Notice Plain Error. SIMPSON v. State, 785 So. 2d 1121 (Miss. 2001).

In denying the Post-Conviction, the Court failed to consider the constructive Denial of Counsel from March 14, 2002 until March 15, 2004, by stating that Jenkins (According to the Appointment order) was not Appointed Counsel from the Public Defender's Office as alleged in his Motion (Page 3) of the Order denying Post-Conviction (R. 171). This finding is clearly erroneous and belied by the Record, (R. 67) Appointment of Public Defender. Also (R. 152) Police Report (4th Paragraph).

The trial Court apparently only reviewed the Record in this case from March 15, 2004 forward and felt the period of two (2) years prior to indictment was not relevant to certain issues presented in the Motion for Post-Conviction Relief.

Certainly the time from arrest to indictment, must be taken into account in this case. No Action whatsoever was taken by Defense Counsel or the State during this period of two (2) years.

Please allow me to remind the Court, for two (2) years

and four (4) months. This was still a Murder case (Not Manslaughter).

Jenkins Presented an Affidavit from Mr. David Thompson stating that the truck (maroon GMC) mentioned in Jenkins Alleged Confession, was not even operable during the time the State alleges this crime was committed. He was to be called as a witness. (R.164)(R.25)

Jenkins submits that this would reflect that the alleged Confession was fabricated, coerced and involuntary. Along with the two (2) hours interval between the time reflected on the Rights Form and the actual alleged Confession.

In Response to the claims of Constructive Denial of Counsel and Speedy trial. The trial Court at (Page 53) of Exhibit "A" submitted by the Couch states there was no Grand Jury during this time because everybody was running for Public Office, D.A. and Assistant D.A. this is a two (2) Year Period we are talking about. From March 14, 2002 until March 12, 2004. (R.228)(LL 10-26).

Jenkins submits that the trial Court's decision denying the Post-Conviction without an Evidentiary Hearing was Error.

The sub-issue of whether a Post-Conviction Relief Petition failed to Allege facts sufficient to Justify an Evidentiary Hearing is a question of Law and the ultimate issue of whether the trial Court properly denied the Relief where the allegation was ineffective Assistance of Counsel, inter alia, is perhaps a question of Law and Fact Requiring Partial de novo review. LEWIS v. State, 798 So.2d. 635 (Miss. 2002). See also, PITMAN v. State, 877 So.2d. 468 (Miss. 2003) unless the trial Court could say that it appears beyond doubt that the

Petitioner can prove no set of facts in support of a claim.
an Evidentiary Hearing is Required

The decision of the trial Court, denying Post-conviction Relief must be reversed for an Evidentiary Hearing on the claims Presented in the interest of Justice.

ISSUE TWO

Whether the trial Court Erred in Denying the Motion to Suppress Regarding the statements of Jenkins.

In MIRANDA v. ARIZONA, 384 U.S. 436, 16 L. Ed. 2d 694, 86 S. Ct. 1602 (1966). The Court noted that the advent of modern custodial Police interrogation brought with it an increased concern about confessions obtained by coercion. n.l. 384 U.S. at 445-448. Because custodial Police interrogation, by its very nature, isolates and pressures the individual, we stated that, "even without employing brutality, the 'third degree' or other specific stratagems... Custodial interrogations exact a heavy toll on individual's Liberty and tread on the weakness of individuals" 384 U.S. at 455.

During the Suppression Hearing the following colloquy transpired on Pages 25 and 26 of the Hearing transcript. (Exhibit "A")
by the Court. (R. 176)

Page 25, L. 23-24 "Q. During the first part of these two tapes do you read him his rights?

A. I would have to review the tape, sir. Normal Procedure is to read an individual his Rights and do a Pre-interview and then videotape. But I'm not sure that the actual

reading of the rights are on these tapes."

On Page (26), L(1-5), the Court stated, "THE COURT:
"Don't you think that's rather germane that if it's not on there then it's definitely not going to be admissible, we've gone through an exercise in futility here?"

the rights were not read on the videotapes. Jenkins Respectfully asks the Court for guidance on this matter, as he has not been able to find any case, directly on this type of issue, whether the rights should be read on the videotapes for them to be admissible?

the first interview with Jenkins was on or about 3-5-2002 and consisted of (29) Pages, No starting or ending time on document. (P-6(G)).

Page (1) reflects Jenkins complaining about narcotics Police bothering him.

Page (3) reflects Jimmy Herzog telling Jenkins, "Now what you say, I'm not B.s.ing you, Okay, what you say stays in this Room, this is very important to us."

Jenkins submits this statement contradicts the well established principle in MIRANDA, supra., Number (3) on the Rights Form "Anything you say can be used against you in Court." (Exhibit P-6(G)) (P. 71)

Page (29) reflects Wayne Black stating to Jenkins, "Me and Mr. Herzog here, we don't work narcotics. What if I go and talk, and I can't promise you nothing, to them narcotics Agents to try to work something out with you."

In response to this, Jenkins stated, "Yes Sir. I will help you to the fullest. Whatever you want me to do. And I'll even ride with you."

this would reflect that Jenkins certainly took Mr. Black's statement as a flattery of hope on his drug charges.

As far back as (1783) in King v. Warickshall, 1 Leach 263, 263, 264, 1168 Eng. Rep. 234, 235 (K.B. 1783) the Courts have held that a free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the strongest sense of guilt. -- but a confession forced from the mind by the flattery of hope, or by the torture of fear, comes in so questionable a shape -- that no credit ought to be given to it, and therefore it is Rejected. PTERRE v. United States, 160 U.S. 355, 357, 40 L.Ed. 454, 16 S.Ct. 321 (1896).

The third interview was held on or about 3-13-2002. The Rights Form and Waiver Reflect a time of 23:34 or 11:30 P.M. on 3-12-2002.

The statement reflects it was given at 1:29 a.m. on the 13th day of March, 2002. (Exhibit P-^{P-136}~~136~~). There was a two (2) hour interval from the time on the Rights Form and the actual interview.

Jenkins' testimony at the suppression hearing starting at (Page 6, L. 21, thru Page 15, L. 19) of the trial Court's (Exhibit "A"), reflects that he was not read his Rights at this interview and that he did not agree to this interview. That he was repeatedly threatened and even slapped by one of the officers. That he didn't want to get hit again as he has epileptic seizures. That he don't drive. That they told him what to say (this is significant because the truck they were talking about, his daddy's truck was not operable during this time as it did not have a transmission).

A Review of the complete suppression hearing transcript will reflect (as well as the statement dated 3-13-2002) will reflect that the officers certainly lead Jenkins during the statement they brought up the truck. see (Page 32) of Exhibit "A" regarding Leading Questions to Jenkins.

In MIRANDA v. ARIZONA, 384 U.S. 436, 16 L. Ed. 2d 194, 86 S. Ct. 1602 (1966) the Court noted that the advent of modern custodial Police interrogation brought with it an increased concern about confessions obtained by coercion. n.1. 384 U.S. at 445-458. Because custodial Police interrogation, by its very nature, isolates and pressures the individual, we stated that "even without employing brutality, the 'third degree' or other specific stratagems... custodial interrogations exact a heavy toll on individuals' liberty and tread on the weakness of individuals." 384 U.S. at 455.

The United States Supreme Court has recognized two constitutional basis for the requirement that a confession be voluntary to be admitted into evidence: the Fifth Amendment Right against self-incrimination and the Due Process Clause of the Fourteenth Amendment. ADAM v. UNITED STATES, 168 U.S. 532, 542, 42 L. Ed. 568, 18 S. Ct. 183 (1897) (stating that the voluntariness test "is controlled by that portion of the Fifth Amendment... Commanding that no person shall be compelled in any criminal case to be a witness against himself.") BROWN v. MISSISSIPPI, 297 U.S. 278, 80 L. Ed. 682, 56 S. Ct. 461 (1936) (Reversing a criminal conviction under the Due Process clause because it was based on a confession obtained by physical coercion).

Jenkins testimony that he was hit and afterward placed on suicide watch, because he was crying and shaking so bad that the officers would not allow him to return to his original cell, would reflect physical abuse by the officers but of course the officers are not going to admit it. Just like they lied during the statement of Jenkins and, that the Affidavit of Mr. David Thompson (who was also listed as a witness in the Post-conviction Motion (Exhibit (P. 8)) (P. 164)) would establish that the statement was fabricated, coerced and involuntary, as the truck could not have been used.

The Court refined the test into an inquiry that examines "whether a defendant's will was overborne" by the circumstances surrounding the giving of a confession. Schneckloth v. Bustamonte, 412 U.S. 218, 223, 36 L.Ed. 2d. 854, 93 S.Ct. 2401 (1973) and the Due Process test takes into consideration "the totality of all the surrounding circumstances... both the characteristics of the accused and the details of the interrogation. Ibid. See Also, Haynes v. Washington, 373 U.S. 503, 10 L.Ed. 2d. 513, 83 S.Ct. 1336 (1963); Mahinski v. New York, 324 U.S. 401, 404, 89 L.Ed. 1029, 65 S.Ct. 781 (1945) (the determination "depends upon a weighing of the circumstances of pressure against the power of resistance of the person confessing." Stein v. New York, 346 U.S. 156, 185, 97 L.Ed. 1522, 73 S.Ct. 1077 (1953); Dickerson v. United States, 530 U.S. 428, 120 S.Ct. 2326, 147 L.Ed. 2d. 405 (2000).

A reasonable and prudent person searching for the truth could easily infer that what Jenkins testified to at the suppression hearing was in fact true.

1. A two(2) hour delay between time on the rights form and the actual statement.
2. the only statement where there was any delay.
3. the use of his daddy's truck was fabricated.
4. Jenkins was Lead through the whole statement.
5. was subjected to physical abuse and threats, or why would then (the officers) have not allowed him to go back to his original cell. Didn't want anyone to see him. He is certainly not suicidal.
6. tell us what we tell you to say. (more likely than not, because of the leading questions.
7. Late at night, alone in a room at the Jail. No one around except himself and two officers.
8. was (49) years of age, approximately 130 pounds. Never been in trouble (except the drug charges) was or had been

Living with his parents and was scared to death.

9. Was lied to by the officers on prior interviews.

10. All interviews prior to his arrest reflect that Jenkins first statement was true.

Jenkins submits the circumstances reflect the statement was in fact coerced, fabricated and involuntary.

Also, Counsel was not prepared for the hearing or the truck issue would certainly have been raised.

Jenkins alleged confession must be found to be involuntary, coerced and inadmissible. Further, that Jenkins Right to Due Process Pursuant to the 5th and 14th Amendments to the United States Constitution was violated.

The Order denying Post-Conviction Relief must be Reversed, the Conviction and sentence be Vacated and set Aside.

ISSUE THREE

Whether the trial Court ERRED in Denying the Motion to Dismiss on the Speedy trial claim.

The Court stated in Murre v. State, 837 So.2d 794 (2003) that "In evaluating Speedy trial issue arising under general constitutional considerations, as opposed to State's speedy trial statute, commencement of period begins when Person is 'accused', which can be arrest, indictment or any formal charge, whichever is first to occur, but in state is construed to be date of arrest. See also, Smith v. State 812 So.2d 1645 (2001).

It is clear from the Record in the instant case, that Jenkins was arrested and had his Initial Appearance on the Charge of Murder, on or about the 14th day of March 2002. He was also appointed Counsel, Public Defender on same date Exhibits (P-6(A) thru(D)). (P. 65-67)

A delay in excess of eight months between arrest and trial establishes 'Presumptive Prejudice' sufficient to trigger analysis under BARKER, SKAGGS v. State, 676 So. 2d 897, 900 (Miss. 1996).

The approximate (850) days between arrest and indictment in the instant case certainly exceeds the eight month threshold.

The trial Court held that the Guilty Plea Waived the Speedy trial claim. Jenkins would disagree with the trial Court for the following reasons.

1. There was no Guilty Plea. Nor a signed Petition to Enter a Guilty Plea when the Motion to Dismiss was filed and the Order entered denying the Motion.

2. Jenkins was still under indictment for Murder as no Motion had been filed to Reduce the Charge to Manslaughter.

3. Jenkins was appointed Counsel (Public Defender) on or about March 14, 2002.

4. No action was taken by Counsel or the State on the Murder charge from March 14, 2002, to March 15, 2004.

5. The Order denying the Motion to Dismiss was entered on or about July 27, 2004.

6. The Petition to Enter Plea of Guilty was signed on or about July 28, 2004.

7. The Counsel's Certificate signed on or about July 29, 2004.

8. The Motion to Reduce Charge was filed on or about July 29, 2004.

9. The Order GRANTING said motion was entered on or about July 29, 2004.

10. The Guilty Plea was entered on or about July 29, 2004.

11. In the Post-Conviction Motion, Jenkins alleged constructive denial of Counsel, from March 14, 2002 to March 15, 2004, under the Speedy trial claim.

Under this claim, Jenkins did in fact mention the constructive denial of counsel.

This Court has held that it will not review an issue not previously raised, because such an issue is barred. Williams v. State, 752 So. 2d 477 (P-7) (Miss. Ct. App. 1999). However, when an issue is not specifically charged, but is mentioned in the prior Pleadings and when the Prisoner is proceeding pro se, the Court will consider that fact and credit not so well Pledged allegations. Moore v. B.C. Ruff, 556 So. 2d 1059, 1061 (Miss. 1990).

The (24) twenty-four month period between arrest and indictment in this case is Presumptively Prejudicial and in violation of Jenkins Constitutional Rights.

"When a defendant's constitutional right to a speedy trial is at issue, the balancing test set out in BARKER v. Wingo, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972) is applicable." Noe v. State, 616 So. 2d 298, 300 (Miss. 1993).

The four factors to be applied under Barker are: (1) Length of Delay; (2) the reason for the delay; (3) whether the defendant asserted his right to a speedy trial; and (4) whether the defendant was prejudiced by the delay.

1. Length of Delay

Jenkins was arrested and charged with murder on or about March 14, 2002.

Was Appointed Counsel on said charge same date.

Was not indicted until on or about March 15, 2004.

A period of approximately (850) days from arrest to indictment.

this is well over the (9) eight month threshold and Presumptively Prejudicial.

this factor must weigh against the state.

2. Reason for Delay

there is not one iota of evidence in the Record reflecting any Reason whatsoever for the Lengthy delay.

Counsel for Jenkins never conducted any discovery, independent investigation, talked with Jenkins, nor file any type of Motions or Pleadings from March 14, 2002 to March 13, 2004.

The State from the District Attorneys Office did not take any kind of action on this case in the (2) two Year period from arrest to indictment.

the investigation on this case ended on March 14, 2002.

No continuances were filed by state or defense counsel.

Mr. Ronald Parrish was a Public Defender in Jones County at the time of Jenkins arrest on the Murder charge and was representing Jenkins at the time on an unrelated charge.

two (2) Years later when Jenkins was indicted, Mr. Parrish was an assistant District Attorney.

there is no Reason for the delay, except as stated by the Court in its Order denying the Speedy Trial Claim and that being that there was no Grand Jury in Jones County during this period of time due to the D.A. and Assistant D.A. running for Public Office.

this factor must be weighed against the state.

3. Defendant's Assertion of His Right to A Speedy Trial.

The state has the burden to bring the defendant to trial. Boss v. State, 605 So. 2d 17, 24 (Miss. 1992); Flores, 574 So. 2d at 1321.

Jenkins was appointed Counsel on March 14, 2002, but never saw Counsel at all for the full (2) two Year period.

Jenkins was effectively without Counsel on the Murder Charge for two (2) Years.

There was no assertion of his Right to Speedy trial during the two(2) Year Period.

After indictment and Counsel being retained by Jenkins sister. A motion to Dismiss was filed on the Speedy trial claim.

4. Prejudicial Effect of the delay

For the two(2) Year Period from arrest, appointment of Counsel and indictment, Jenkins was constructively denied his Right to Effective Assistance of Counsel.

Counsel did absolutely nothing in this case from the date of Appointment, March 14, 2002 til March 15, 2004, and Jenkins never saw Counsel between these dates. All Jenkins knew was that Judge David Lyons Appointed the Public Defender's office to Represent him on this case. (Exhibit P-6(D)), (P. 67)

At the time, Mr. J. Ronald Parrish was a Public Defender in Jones County and was currently Representing Jenkins on an unrelated charge.

At the time of indictment Mr. Parrish was Assistant District Attorney for Jones County.

The denial of Counsel for two(2) years was highly Prejudicial to Jenkins case.

Counsel would have discovered that I do not drive and do not have a driving Record. Also, that the truck that was allegedly used by me was not drivable as it did not have a transmission.

that the trailer was Leased by Turkey Kews (a known Drug dealer) at the time the States alleges Mr. Gillum was killed.

that Jenkins was woke up early in the morning by his mother and told that Kews wanted Jenkins to come and clean up the trailer.

Kews should have been interviewed. The car Kews had should have been Processed.

The Mississippi Supreme Court has established that such failure to conduct a proper investigation results in ineffective assistance of counsel. Trickett v. State, 666 So. 2d. 1356, 1361-62 (Miss. 1995); Mundy v. State, 644 So. 2d. 451 (Miss. 1994); State v. Tokman, 564 So. 2d. 1339, 1342-43 (Miss. 1990). See also, Neely v. Cabana, 764 F. 2d. 1173, 1177 (5th Cir. 1985).

Mr. Parrish, being a Public Defender in Jones County and possibly appointed to represent Jenkins in this case and having his sights set on a job in the District Attorneys office during this time, could be easily inferred that him not filing any motions and not doing an investigation in this case for two (2) years, was for the purpose of the state to gain a tactical advantage in this case.

Jenkins was denied his right to a speedy trial guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article 3, § 26 of the Mississippi Constitution of 1890.

The only possible remedy is the dismissal of the indictment. When the result has been deprived. BARKER v. Wingo, supra, at 92 S.Ct. 2188.

The indictment must be dismissed and Jenkins discharged.

ISSUE FOUR

Whether Jenkins Guilty Plea was Voluntary, Knowingly and Intelligently Entered on the Charge of Manslaughter.

to be knowing and intelligent, the defendant must have, "a full understanding of what the Plea Connotes and its Consequences". Boykin v ALABAMA, 395 US, 238, 244, 89 S.Ct. 1709, 23 L.Ed.2d, 274 (1969).

The Order Granting the Motion to Reduce Charge did not set forth the elements of Manslaughter. (Exhibit (P-3)) (P.36)

The Petition to Enter Plea of Guilty does not set forth the elements. (Exhibit (P-4)) (P.37)

The Guilty Plea transcript (Exhibit P-5) does not reflect that the Court advised Jenkins of the elements of Manslaughter or explained to Jenkins the difference between Murder and Manslaughter, nor does it reflect the Court advised Jenkins of the Maximum and minimum sentence for the offense.

In Austin v State, 734 So.2d. 234 (Miss. App. 1999) the Court held that, "It is essential that an accused have knowledge of the crucial elements of the charge against him, that he fully understand the charge and what might happen to him in the sentencing phase as a result of having entered a Plea of Guilty." LASKIN v State, 618 So.2d. at 107.

"It is the duty of the trial Court to address the defendant personally and to inquire and determine -- that the accused understands -- the maximum and minimum Penalties Provided by Law" U.R.C.C. 8.04(A)(4)(b).

Counsel did not discuss possible defenses, nor did she discuss with Jenkins the evidence the state had against Jenkins. Jenkins submits this information was necessary in order for him to make a fully informed, knowing and intelligent decision as to whether to Enter a Plea or go to trial.

Jenkins received Police Investigation Reports, Lab Reports and other various documents, which Jenkins submitted as a Collective Exhibit (P-6) to the Motion for Post-Conviction and made Part of the Record.

After reviewing all of this information, it is beyond any doubt, that had Jenkins been made aware of this information he certainly would have chosen to proceed to trial and would have not Pled Guilty.

In Myers v. State, 583 So.2d. 174 (Miss. 1991) the Court stated that, "where defendant's Plea of Guilty is coerced or otherwise involuntary, any Judgment of conviction entered thereon is subject to collateral Attack, to be enforceable, a guilty Plea must emanate from accused's informed consent."

Jenkins decision was not based on informed, knowing and intelligent consent.

the Guilty Plea, conviction and sentence must be vacated and set aside in the interest of Justice.

ISSUE Five

Whether the Evidence of Material Facts, not previously presented and heard, requires a Vacation of the Conviction and Sentence in the interest of Justice.

During the Video taped statements, it was repeatedly stated that Jenkins used his daddy's truck (Maroon GMC) to dispose of the body of Mrs. Gillum. This is rebutted by the affidavit of Mr. David Thompson (Exhibit P-8) which reflects the truck was without a transmission during the time in which the state alleges the crime was committed.

It was in the shop sometime prior to November, 2001 until January, 2002. Wherefore, it could not have been used.

Mr. Thompson was listed as a witness in the Post-Conviction Motion.

the indictment states that Ms. Gillum was hit in the head by Jenkins with a lamp. Had Counsel interviewed Ms. Rogers (owner of the trailer) she would have there were no lamps in the trailer. Due to a burglary prior to this offense.

Had the Jones County Authorities investigated properly they would have discovered that turken Kews was leasing the trailer at the time the crime was committed. Kews was a known drug dealer. they never inquired into this. they (the Jones County Authorities) knew that Ms. Gillum was a drug addict and prostitute.

Jenkins' mother woke him up early in the morning and told him that Kews wanted him to come to the trailer and clean it up.

When Jenkins arrived at the trailer, he saw what appeared to be blood on the wall and floor. Kews told Jenkins he had hit someone in the head with his 9mm Pistol and had broken the clip. Jenkins cleaned up the blood and better.

Kews called Jenkins back the next day and ask Jenkins if he could fix the lock on the trunk of his (Kews) car. A 1984 Buick, Black over Blue. When Jenkins finally got the trunk open, he noticed the trunk lining had been torn out of the trunk. Kews told Jenkins he had torn it out.

Jenkins Advised the Jones County Authorities of this when they first talked to him. Although it was not recorded.

the evidence of blood in the trailer, was never tested for Blood typing or DNA, as they could not obtain enough to do so. The only thing the Lab Report reflects is that it was human Blood. Exhibit (P-6 (L)), (P. 160)

Wayne Black stated Fingers Prints were found and told Jenkins they were his. this is belied by the Lab Report and the Search Warrant Inventory. Exhibit (P-6 (K)), (P. 155)

Also that Ms. Gillum's Blood was found in the trailer.
Had this case been adequately investigated, the Charge
against Jenkins would have been dismissed.

There is certainly other highly probable suspects in
this case that Jones County Authorities and Counsel were
aware of and never found or interviewed.

Juergen Keys had the motive, because Ms. Gillum
was in debt to him for drugs.

This case turns on a very shoddy Police Investigation
and corruption in Jones County.

The decision of the Trial Court should be reversed
and the conviction and sentence vacated and set aside.

In the Very Least an Evidentiary Hearing

ISSUE SIX

Whether there was a Constructive Denial
of Counsel, which was Prejudicial for
Jenkins between March 14, 2002 and March 15,
2004.

The Sixth Amendment in part provides. "In all criminal
Prosecutions, the accused shall enjoy the Right... to have the
Assistance of Counsel for his defense" the Sixth Amendment
Right to defense Counsel in Felony Prosecutions is a
fundamental Right, binding on the states through the
Fourteenth Amendment. Gideon v. Wainwright, 372 U.S. 335,
83 S.Ct. 792, 9 L.Ed.2d. 799 (1963). This Right is the Right
to Effective Assistance of Counsel. McMann v. Richardson,
397 U.S. 759, 771 n. 14, 90 S.Ct. 1441, 1449, 25 L.Ed.2d. 763 (1970).

In the instant case, the Record clearly reflects that
Jenkins was arrested and charged with Murder on March 14,
2002. Exhibits (P-6 (A)(B)(C)(D)(E) & (F). (P. 65-70)

Jenkins was Appointed Counsel (Public Defender) on the same date, March 14, 2002. Exhibit (P-6(D)), (P-67)(P-152)

From March 14, 2002, until March 15, 2004, Jenkins never saw counsel and there is no record that anything was done in the case by counsel or the state during this time.

A Period of two (2) years and no action whatsoever by Defense Counsel on a Murder charge.

Jenkins submits he was constructively denied the Assistance of Counsel for a period of two (2) years on a charge of Murder.

The Constitution's guarantee of assistance of Counsel cannot be satisfied by mere formal appointment. Avery v. Alabama, 308 U.S. 444, 446, 60 S.Ct. 321, 322, 84 L.Ed. 377 (1940) (Cited in Huck v. Day, 964 F.2d 155, 159 (5th Cir. 1992).

The Supreme Court dispensed with the Strickland Prejudice inquiry in cases of actual or constructive denial of Counsel. As the Court has explained, "there are -- circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified." Cronic, 466 U.S. at 658, 104 S.Ct. at 2046.

In Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) the Court, itself added that:

"In certain Sixth Amendment contexts, Prejudice is Presumed. Actual or Constructive denial of the Assistance of Counsel altogether is legally presumed to result in Prejudice. See United States v. Cronic, 466 U.S. at 659 and n. 25, 104 S.Ct. at 2046, 2047 and n. 25. Prejudice in these circumstances is so likely that case-by-case inquiry into Prejudice is not worth the cost 466 U.S. at 659, 104 S.Ct. at 2047. Moreover, such circumstances involve impairments of the Sixth Amendment Right that are easy to identify. (Underlined by Petitioner for Emphasis)"

The Court further explained that a constructive denial of Counsel occurs when the defendant is deprived of "the guiding hand of Counsel" Powell v. ALABAMA, 387 U.S. 45, 49, 53 S.Ct. 55, 64, 77 L.Ed. 158 (1932).

In addition, Constructive denial will be found when Counsel fails "to subject the Prosecution's case to meaningful adversarial testing..." Idol v. State, 466 U.S. at 659, 104 S.Ct. at 2047. Accordingly, when the defendant can establish that Counsel was not merely incompetent but inept, Prejudice will be presumed.

Jenkins submits the Record between March 14, 2002 until March 15, 2004, reflects that Defense Counsel nor the State took any action in this case.

Counsel did not conduct any type of investigation; did not interview witnesses; did not Request Discovery, no motions were filed for continuance or anything else by Defense Counsel or the state.

Mr. J. Ronald Parrish was a Public Defender in Jones County during this time & was currently representing Jenkins in an unrelated case. (currently represented by the Public Defender's office), Exhibits (P-6 (A) thru (D)), (R. 65-67) (R. 152)

At the time Jenkins was indicted, Mr. Parrish had become the Assistant District Attorney in Jones County.

Failure of Counsel to interview witness early on in this case was highly Prejudicial to Jenkins. Nesby v. Cabana, 764 F.2d. 1173, 1177 (5th Cir. 1985) the Court held that "at a minimum, Counsel has a duty to interview potential witnesses and to make independent investigation of the facts and circumstances of ~~the~~ case."

The conviction and sentence must be vacated and set aside in the interest of Justice, as Jenkins has been denied his right to Counsel pursuant to the 6th and 14th Amendments to the United States Constitution.

ISSUE SEVEN

Whether Jenkins was denied the Effective Assistance of Counsel by Retained Counsel from on or about March 22, 2004 to July 29, 2004.

The Right to Effective Assistance of Counsel is guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution. Linder v. Wainwright, *supra.*; McMann v. Richardson, *supra.*

On or about 3-22-04, Jenkins's sister retained the services of Honorable Otis Strickland to represent Jenkins in this case.

Jenkins asserts Ms. Strickland did not conduct an independent investigation of the facts and circumstances of this case, did not interview witnesses.

The Record reflects that Ms. Strickland filed three (3) motions in this case. Motion to Suppress. Motion to Dismiss. Motion for Continuance. All filed on July 26, 2004, three days prior to Ms. Strickland advising Jenkins to Plead Guilty to manslaughter.

Had Ms. Strickland adequately investigated the case by contacting witnesses and not merely relying on what the State provided in discovery, she ~~could~~ have been successful in showing the video taped statement was coerced, fabricated, and involuntary, as the truck alleged to have been used was not operable due to not having a transmission.

Had she adequately reviewed the Lab Reports and Police Investigation Reports she ~~would~~ have found the State did not have a case against Jenkins.

In the indictment it was specifically set out that Jenkins had hit Ms. C. Munn in the head with a table lamp causing her death.

Had Mrs. Strickland interviewed Ms. Rogers (owner of the trailer) she would have found that there were no lamps in the trail at the time the state alleges the offense was committed.

Had she adequately reviewed the Lab Reports, she would have found that the presence of blood found in the trailer could only be said to be human blood. No blood typing or DNA could be performed.

Also, in the Lab Report (Follow-up) she would have found that Wayne Black advised Mr. Jamie Bush, Crime Lab, that he (Black) had credible information that the occupant of the trailer was seen cleaning up what appeared to be blood. Exhibit (P-6(L)), (R. 160)

Had she investigated, she would have found Turkey Keys (A known drug dealer) was leasing the trailer at the time the offense occurred. That Jenkins was not the occupant of the trailer, but lived next door with his mom & Dad.

A witness list was written down by Mrs. Strickland but never interviewed. Exhibit (P-7), (R. 163)

Mrs. Strickland did not request subpoenas for any witnesses.

Failure to conduct a proper investigation results in ineffective assistance of counsel. Triplett v. State, 666 So. 2d. 1356, 1361-62 (Miss. 1993); Moody v. State, 644 So. 2d. 451 (Miss. 1994); State v. Tokman, 564 So. 2d. 1339, 1342-43 (Miss. 1990). See also, Neely v. Cabana, supra.

This Court has stated that:

Failure of counsel to issue subpoenas even for friendly favorable witnesses is Perilous. Eslick v. State, 238 Miss. 661, 119 So. 2d. 352 (1960); Bolin v. State, 209 Miss. 866, 48 So. 2d. 581 (1950) Having a Constitutional Right at no cost to himself "to have compulsory process for obtaining

witnesses in his favor" Miss. Const. Article 3 § 26, there is simply no excuse for defense Counsel failing to request a subpoena for his witnesses. Counsel was derelict in failing to seek discovery and in requesting witness subpoenas.

Triplett, 666 So. 2d. at 1361 (Emphasis Added)

Ms. Strickland, after she was unsuccessful in getting the video taped statement (due to inadequate investigation, and not interviewing potential witnesses) insisted that Jenkins Plead Guilty, but telling that he would set life on the video statement alone if he went to trial.

In Chidress v. Johnson, 103 F.3d 1221 (5th Cir. 1997), the Court stated: "In repeatedly applying the Supreme Court's teachings, we have stated that 'one of the most precious applications of the Sixth Amendment may well be in affording Counsel to advise a defendant concerning whether he should enter a guilty plea.'" Reed v. United States, 354 F. 2d 227, 229 (5th Cir. 1965); Harvey v. Mississippi, 340 F. 2d 263, 269 (5th Cir. 1965).

It is clear that a defendant is entitled to the effective assistance of counsel in determining how to plead and making his plea and can attack his conviction collaterally if he is not given this right. Colson v. Smith, 438 F. 2d 1073, 1078 (5th Cir. 1971).

The Supreme Court has noted:
Representation of a criminal defendant entails certain basic duties -- [these include] the overarching duty to advocate the defendant's cause and the more particular duties to consult with the defendant on important developments in the course of the prosecution. Strickland, 466 U.S. at 668, 104 S.Ct. at 2065.

the Sixth Amendment imposes these duties on counsel representing the accused at a plea hearing, as well as at trial. Even when the accused intends to Plead Guilty, "Counsel still must render competent service." HERRING v. ESTELLE, 491 F.2d 125, 128 (5th Cir. 1974). We explained: It is the lawyer's duty to ascertain if the plea is entered voluntarily and knowingly. He must actually and substantially assist his client in deciding whether to Plead Guilty. It is his job to provide the accused an understanding of the law in relation to the facts. The advice he gives need not be perfect, but it must be reasonably competent. His advice should permit the accused to make an informed and conscious choice. In other words, if the quality of counsel's service falls below a certain minimum level, the client's guilty Plea cannot be knowing and voluntary because it will not represent an informed choice. And a lawyer who is not familiar with the facts and law relevant to his client's case cannot meet that required minimal level.

Jenkins states that had he been made aware of the facts and law pertaining to his case as found in Counsel's files he would have chosen to proceed to trial.

He was not provided with this information by counsel in order to make a knowing, conscious and informed decision as to whether he should accept the Plea.

Due to counsel's failure to become familiar with the facts of the case and law relevant to the facts, she could not have provide Jenkins with an understanding of the law to the facts of the case.

She based her decision to insist on Jenkins to Plead Guilty, solely upon the video taped statement, that she could not get suppressed, because she didn't do an independent investigation nor contact potential witnesses which would have testified as to the truck not being operable.

Jenkins Right to Effective Assistance of Counsel Pursuant to the Sixth and Fourteenth Amendment to the United States Constitution was violated.

the conviction and sentence must be vacated and set-aside in the interest of Justice.

Issue Eight

Whether the Cumulative Effect of the Assigned Errors Denied Jenkins his Right to Due Process and Fair Proceedings in this case which would Require Reversal.

While individual errors, not reversible in themselves, may combine with other errors to make up reversible error, Lenard v. State, 928 So. 2d 232 (Miss. 2002)

Jenkins submits that the errors assigned herein combined constitute reversible error, as they denied him due Process and Fundamentally Fair Proceedings (from March 14, 2002, until date of Plea, July 29, 2004,) Pursuant to the 5th, 6th and 14th Amendments to the United States Constitution.

the conviction and sentence must be vacated and set Aside in the interest of Justice.

Conclusion

Wherefore, Premises Considered, Jenkins conviction and sentence must be vacated and set Aside in the interest of Justice and Jenkins discharged.

Respectfully Submitted,

Lewis Jenkins

Lewis Jenkins Appellant Prose.

subscribed and sworn to this the 29th day of May, 2007.

Jan Ardis
NOTARY

My Commission Expires: My Commission Expires May 8, 2009

Certificate of Service

I, Lewis Jenkins, do hereby certify that I have this date, mailed via United States Mail, Postage Prepaid, a true and correct copy of "Appellant's Brief" to the persons listed below:

Ms. Betty W. Septon, Clerk
Mississippi Supreme Court
P.O. Box 249
Jackson, Ms. 39202

Honorable Jim Hood
Attorney General
P.O. Box 220
Jackson, Ms. 39202

This the 11th day of JUNE, 2007.

Lewis Jenkins
Lewis Jenkins #10407
MLWCF
P.O. Box 528
Columbia, Ms. 39429.